

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH A. ESTES and U.S. POSTAL SERVICE,
POST OFFICE, Nashville, TN

*Docket No. 00-1019; Submitted on the Record;
Issued February 12, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant sustained an emotional condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for reconsideration.

The Board has given careful consideration to the issues involved, the contentions of the parties on appeal and the entire case record. The Board finds that the decision of the Office hearing representative, dated and finalized August 4, 1999, is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.

By letter dated October 27, 1999, appellant requested reconsideration of the denial of his claim.

By decision dated November 30, 1999, the Office denied appellant's request for reconsideration.

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.¹ When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.²

¹ 20 C.F.R. § 10.606(b)(2) (1999).

² 20 C.F.R. § 10.608(b) (1999).

The August 4, 1999 decision of the Office hearing representative denied appellant's claim for an emotional condition on the grounds that the factors alleged by appellant to have caused his emotional conditions -- his reaction regarding problems with his claim for a back injury, his reaction to his back pain, and his reaction to a denial of permanent limited duty by the employing establishment -- were not compensable factors of employment.

In his October 27, 1999 request for reconsideration, appellant stated that his memory of the testimony given at the oral hearing differed from the written transcript³ and he requested a copy of the transcript. He also stated that the decision of the Office hearing representative contained errors. He stated that the Office hearing representative was incorrect in stating that he was stressed between April 1996 and August 1998 because he had been denied permanent light duty and in stating that his restrictions were accommodated by the employing establishment in temporary assignments. He also alleged that an employing establishment human resources specialist had erred in a June 18, 1999 letter to the Office hearing representative when stating that the employing establishment had offered him a light-duty position within his medical restrictions and that another employing establishment had erred in indicating that he had filed another claim for an emotional condition in 1996. However, these alleged errors do not bear on the issue as to whether the three factors alleged by appellant to have caused his emotional condition -- his reaction to the handling of his back injury claim, his reaction to his back pain, and his reaction to the denial of a permanent light-duty job -- were compensable factors of employment and therefore these alleged errors do not constitute relevant and pertinent factors not previously considered by the Office and are not sufficient to require further merit review.

Appellant also submitted a copy of his application for retirement, copies of leave requests and a medical report dated April 2, 1998 regarding his left thumb arthritis.⁴ However, this evidence does not constitute relevant and pertinent evidence not previously considered by the Office as it does not address the issue of whether the factors alleged to have caused appellant's emotional condition were compensable factors of employment and is therefore not sufficient to require further merit review.

³ On August 10, 1999 appellant requested a copy of the audiotape of the oral hearing. By letter dated September 20, 1999, the Office's Branch of Hearings and Review denied appellant's request, stating that audiotapes of oral hearings were the property of the court reporting service and were not available to the Office for duplicating purposes. Appellant was advised that he could file an appeal regarding his request for an audiotape with the Office's Solicitor of Labor. By letter dated September 25, 1999 to the Solicitor of Labor, appellant requested a copy of the audiotape of the oral hearing. There is no indication in the record that a decision has been issued in this matter. As this issue of the denial of the audiotape is pending before the Office's Solicitor of Labor, the Board lacks jurisdiction to review this issue. The Board and the Office may not simultaneously have jurisdiction over the same issue in the same case. *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).

⁴ Appellant also submitted evidence previously of record.

The decisions of the Office of Workers' Compensation Programs dated November 30 and August 4, 1999 are hereby affirmed.

Dated, Washington, DC
February 12, 2001

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member